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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/523,752 | 02/08/2005 | Klemens Kieninger | 502901-330PUS | 2727 |
| 27799 7590 09/02/2009 COHEN, PONTANI, LIEBERMAN & PAVANE LLP 551 FIFTH AVENUE SUITE 1210 NEW YORK, NY 10176 | | | | |
| EXAMINER FREAY, CHARLES GRANT | | | | |
| ART UNIT 3746 | | PAPER NUMBER | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,752

Applicant(s)

KIENINGER ET AL.

Examiner

Charles G. Freay

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SD/CS)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 6, 2009 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure as originally filed does not set forth that only the outlet orifice is arranged inside the pot. As shown in the drawings the mixing tube also arranged inside the pot.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is vague and indefinite because it sets forth that only the orifice is arranged in the pot. The orifice cannot be defined without the corresponding and surrounding mixing tube structure. Therefore, the orifice alone, i.e. only the outlet orifice, cannot be arranged alone in the pot.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 6, 7, 10 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sawert (USPN 5,139,000).

Sawert discloses a suction jet pump having a propulsion jet nozzle 66 with a round orifice 70, a mixing tube 72, and suction line 58 which connects to the suction jet pump at an intake orifice, and having the mixing tube plug connected to and within a pot 54, 64 which is coupled to and fills a baffle 12. The mixing tube is parallel to the bottom of the pot. The baffle 12 as shown in the figure is U-shaped and the coupling wall 22 is

connected from the pot 64 to the baffle at a location and at a distance between the top and bottom of the baffle.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4, 6, 7, 10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese reference (JP 05-99090 (hereafter JP-'090)) in view of Becker et al (USPN 6,619,927).

JP-'090 discloses a suction jet pump having a propulsion fluid pipe 13, a mixing tube 8, and suction line 12 which connects to the suction jet pump at an intake orifice, and having the mixing tube within a pot 9 which is coupled to and fills a baffle 15. The mixing tube is perpendicular to the bottom of the pot and the pot and the suction jet pump are fluidly connected. JP-'090 does not disclose the propulsion jet nozzle having a round orifice or the pump being connected to the pot by a latch or the jet pump being integrally formed with the pot. Becker et al discloses a suction jet pump used in a similar fuel tank environment as JP-'090 and having around propulsion jet 10 outlet nozzle 11 and a latch 20 for connecting and securing the pump in place. At the time of the invention it would have been obvious to one of ordinary skill in the art to utilize a propulsion jet structure and connection assembly s taught by Becker et al for the generically disclose suction jet pump in JP-'090 as a well known and simple jet pump structure which is easily connected and disconnected to the pot arrangement.

With regards to claims 13-15 each of the pot and the baffle are U-shaped are coupled at least fluidly along their sides, thus meeting the claim limitations.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawert.

As set forth above Sawert discloses a suction jet pump substantially as claimed but does not disclose that the pot and the jet pump are integrally formed. At the time of the invention it would have been obvious to one of ordinary skill in the art to have integrally formed the elements, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. See *Howard v. Detroit Works*, 150 U.S. 164 (1991).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawert as applied to claim 8 above, and further in view of Ramamurthy et al (USPAP 2003/0213477).

As set forth above Sawert discloses the inventions substantially as claimed but does not disclose welding or adhesively bonding the pot to the suction jet pump. However, Ramamurthy teaches of a fuel pump module including a reservoir having a jet pump whereby the jet pump is welded to the reservoir (see abstract). At the time of the invention it would have been obvious to one of ordinary skill in the art to connect or bond the pot to the jet pump as disclosed by Sawert through means of welding as taught by Ramamurthy et al to create a secure connection there between.

Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-'090 in view of Becker as applied to claim 3 above, and further in view of Herzog et al (USPN 6,708,673).

As set forth above JP-'090 in view of Becker discloses the invention substantially as claimed but does not disclose that the mixing tube is at a specific angle with respect to the perpendicular axis and the bottom of the pot. Herzog et al discloses a pot having a jet pump and mixing nozzle 14 which curves from the perpendicular direction through an multitude of angles, including those claimed, before entering the pot. At the time of the invention it would have been obvious to one of ordinary skill in the art to arrange the mixing nozzle at an angle in order to fit the pipe within the space and confines of the tank within which the pump is to be used.

Response to Arguments

Applicant's arguments filed August 6, 200 have been fully considered but they are not persuasive.

With respect to claims 1 and 2 the applicant argues that Sawert does not disclose a suction jet wherein an outlet orifice of the mixing tube is arranged in a pot, the pot being coupled to a sidewall baffle. The applicant details various features and differences between the disclosed invention of the applicant and the Sawert pump in the last paragraph of page 6 in the remarks and the first paragraph of page 7. The applicant notes the low conveyance factor being a disadvantage and notes that an improved conveyance factor is obtained. The applicant also argues the configuration of the pump in Sawert always has to feed against the fuel level of the reservoir. The applicant also makes an argument, which the examiner simply disagrees with (58 is a line that operates by suction in Sawert), that the pump is not a suction pump. In response to

applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. the details such as a low conveyance factor and the specific orientations, fluid levels and pressure distributions) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant also makes the argument that the element 64 is not a pot and refers to it as a drain. The examiner notes that item 54 in Sawert is a drain, not item 64. Furthermore, the term "pot" is a broad limitation and the item 64 of Sawert meets this claim limitation. Also the pot 64 is coupled to a baffle 12 of Sawert by the horizontal wall 22.

The applicant's arguments with regards to new claims 13-15 have been addressed in the rejections set forth above.

With regards to the applicant's arguments relating to the rejection under 35 USC 103 and the teachings of JP ('090) in view of Becker et al the applicant argues that the subtank (pot) 9 and the tank (baffle) 15. The examiner disagrees. Mechanically speaking the examiner takes the position that the two elements must be and are coupled. The tank/pot 9 cannot be suspended in space with no support relative to the surrounding structure. Furthermore, even if the extreme position is taken that the tank 9 floats in space the fluid within the tank 15 and other flow paths would fluidly connect and couple the pot 9 and the baffle 15 together. The examiner notes that "couple" is a broad limitation and does not mean directly structurally connected.

On page 8 the 3rd and 4th paragraphs the applicant makes arguments relating to the pump feeding against fluid levels within the tanks. . In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. the fluid level) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/
Primary Examiner
Art Unit 3746

CGF
August 30, 2009